
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

DON W. DUNBAR,

Plaintiff,

vs.

**G. LYNNE NELSON, Cache County Utah
Sheriff et al.,**

Defendants.

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Case No. 1:12CV248 DAK

This matter is before the court on the Magistrate Judge’s Report and Recommendation pertaining to the Cache County Defendants’ Motion to Dismiss.¹ On December 6, 2012, Plaintiff filed his Complaint,² and, on December 7, 2012, the case was referred to a Magistrate Judge under 28 U.S.C. § 636(b)(1)(B).³ Soon thereafter, the Cache County Defendants filed a Motion to Dismiss, and Plaintiff subsequently responded to the motion and also responded to Defendants’ reply memorandum (“Plaintiff’s Surreply”).⁴ He also filed two additional motions, a Motion to

¹ The “Cache County Defendants” are G. Lynne Nelson, the Cache County Sheriff, and James Swink a prosecutor for the Cache County Attorney’s Office.

² Docket No. 2.

³ Docket No. 5.

⁴ See Docket Nos. 7 & 10, respectively.

Strike Defendants’ Motion to Strike and a Motion for Service of Process.⁵ On July 15, 2013, the Magistrate Judge issued a Report and Recommendation, recommending that (1) the Cache County Defendants’ Motion to Dismiss be granted; (2) the Complaint against the State of Utah and Defendant Cox be dismissed under 28 U.S.C. § 1915(e)(2)(B)(ii); (3) the Cache County Defendants’ Motion to Strike Plaintiff’s Surreply be granted; (4) Plaintiff’s Motion to Strike be denied; (5) Plaintiff’s Motion for a Protective Order and Motion for Service of Process be deemed moot.⁶ On July 19, 2013, Mr. Dunbar filed an Objection⁷ and also improperly called the Magistrate Judge’s office to complain about the Report and Recommendation.⁸ On July 22, 2013, Plaintiff filed a “Supplemental Pleading, Objection, Amended Complaint.”⁹

Under 28 U.S.C. § 636(b)(1)(B), a district court must make *de novo* determinations as to a magistrate judge’s recommendations if a party objects to the magistrate’s recommendations. *See Phillips v. Beierwaltes*, 466 F.3d 1217, 1222 (10th Cir. 2006). Accordingly, the court has reviewed the entire record in this case, including Plaintiff’s Objections and his “Supplemental Pleading, Objection, Amended Complaint.” Having made a *de novo* review as to the Magistrate Judge’s Report and Recommendation, the court accepts in whole the findings and

⁵ Docket Nos. 12 & 15, respectively.

⁶ Docket No. 18.

⁷ Docket No. 19.

⁸ Docket No. 20.

⁹ Docket No. 22.

recommendations made by the magistrate judge and therefore adopts the Report and Recommendation in its entirety.

CONCLUSION

For the foregoing reasons, the court hereby APPROVES and ADOPTS the Magistrate Judge's Report and Recommendation. Accordingly, the Cache County Defendants' Motion to Dismiss is GRANTED, and Plaintiff's Complaint against all Defendants is DISMISSED.

Based on Plaintiff's "Supplemental Pleading, Objection, Amended Complaint," it appears that filing a new action will be futile, but out of an abundance of caution, the court dismisses this action without prejudice. If Plaintiff files a new case, he must properly serve any named Defendants, which did not occur in the instant case. Plaintiff's remaining motions are MOOT, and the Clerk of Court is directed to close this case.

DATED this 28th day of August, 2013.

BY THE COURT:

A handwritten signature in black ink, reading "Dale A. Kimball", written over a horizontal line.

DALE A. KIMBALL
United States District Judge